

## HOUSE BILL NO. 379

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF TAXES; AMENDING PROVISIONS FOR THE WAIVER OF INTEREST; REVISING THE LATE FILING PENALTY; PROVIDING AN AUTOMATIC EXTENSION FOR THE FILING OF INDIVIDUAL INCOME TAXES; REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; PROVIDING THAT INTEREST ASSESSMENTS ON DELINQUENT INCOME TAXES ARE BASED ONLY ON THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; CLARIFYING THE ALLOCATION OF A FEDERAL INCOME TAX REFUND; DECREASING THE STATUTES OF LIMITATION FOR INDIVIDUAL INCOME TAX FROM 5 YEARS TO 3 YEARS TO BE UNIFORM WITH OTHER TAX TYPES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-30-2110, 15-30-2339, 15-30-2341, 15-30-2512, 15-30-2531, 15-30-2604, 15-30-2605, 15-30-2606, 15-30-2607, 15-30-2609, 15-30-2643, AND 15-30-3003, MCA; AND PROVIDING EFFECTIVE DATES, ~~AND~~ APPLICABILITY DATES, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-1-206, MCA, is amended to read:

**"15-1-206. Waiver of penalties -- interest.** (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed ~~\$100 due upon the tax~~ \$500 due for each tax period. When the department enters into a payment plan with a taxpayer that allows the taxpayer to make installment payments of delinquent taxes, interest, and penalties, the department may, at the conclusion of the payment plan term, agree to waive an additional \$100 of interest for each tax period if the taxpayer has complied with all of the provisions of the payment plan."

1           **Section 2.** Section 15-1-216, MCA, is amended to read:

2           **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**  
3 **-- exceptions -- uniform provision for interest on overpayments.** (1) A person who fails to file a required tax  
4 return or other report with the department by the due date of the return or report, including any extension of time  
5 allowed for in Title 15, chapter 30 or 31, of the return or report must be assessed a late filing penalty of \$50 or  
6 the amount of the tax due, whichever is less. The penalty is the greater of \$50 or 5% of the tax due for each  
7 month during which there is a failure to file the return or report, not to exceed an amount up to 25% of the tax due.  
8 The late filing penalty is calculated from the due date or extended due date until the department actually receives  
9 the late return or report. The penalty is computed only on the net amount of tax due, if any, as of the original due  
10 date or extended due date provided for in Title 15, chapter 30 or 31, after credit has been given for amounts paid  
11 through withholding, estimated tax payments, or other credits claimed on the return.

12           (2) (a) (i) Except as provided in 15-30-2604(3)(c) and subsection subsections (2)(a)(ii), (2)(b), and (2)(d)  
13 of this section, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% 0.5%  
14 a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

15           (ii) A penalty imposed under subsection (2)(a)(i) may be waived if:

16           (A) the taxpayer pays the tax and interest due with the tax return or report within 30 days following the  
17 first notice from the department to the taxpayer of the amount due; or

18           (B) subject to the conditions of 15-30-2512(1)(a)(i), the taxpayer pays at least 90% of the tax, when due,  
19 for the current year.

20           (b) (i) A Except as provided in subsections (2)(b)(ii) and (2)(d), a person who fails to pay a tax when due  
21 under Title 15, chapter 30, part 25, chapter 53, chapter 65, or chapter 68, or Title 53, chapter 19, part 3, must be  
22 assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not  
23 exceed 15% of the tax due.

24           (ii) A penalty imposed under subsection (2)(b)(i) may be waived if the taxpayer pays the tax and interest  
25 due with the tax return or report within 30 days following the first notice from the department to the taxpayer of  
26 the amount due.

27           (c) Except as provided in 15-30-2604(3)(c), the The penalty imposed under subsection (2)(a) or (2)(b)  
28 of this section accrues daily on the unpaid tax from the original due date of the return regardless of whether the  
29 taxpayer has received an extension of time for filing a return.

30           (d) A penalty may not be imposed under subsection (2)(a) or (2)(b) on the amount of unpaid tax if the

1 taxpayer demonstrates there is reasonable cause for the failure to pay the tax.

2 (3) (a) Subject to subsection (3)(b), a person who makes a substantial understatement of tax imposed  
3 under Title 15, Title 16, chapter 11, or Title 53, chapter 19, part 3, must be assessed a substantial understatement  
4 penalty in an amount equal to 20% of the understatement. As used in this subsection (3), "understatement"  
5 means the amount of the tax required to be shown on the return for the tax year less the amount of tax that the  
6 taxpayer reported on the return. For purposes of this subsection (3):

7 (i) there is a substantial understatement of tax penalty imposed under Title 15, chapter 30, except for  
8 Title 15, chapter 30, part 33, if the understatement exceeds the greater of 10% of the amount of tax required to  
9 be shown on the return or \$3,000; and

10 (ii) there is a substantial understatement of tax penalty imposed for all other chapters under Title 15,  
11 including Title 15, chapter 30, part 33, and for Title 16, chapter 11, and Title 53, chapter 19, part 3, if the  
12 understatement exceeds the lesser of:

13 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than  
14 \$10,000; or

15 (B) \$500,000.

16 (b) The amount of substantial understatement of tax penalty must be reduced by the amount of the  
17 understatement that is attributable to:

18 (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for the treatment;  
19 or

20 (ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the  
21 return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item  
22 by the taxpayer.

23 ~~(3)(4)~~ (4) (a) Except as provided in subsection (4)(b), a person who purposely or knowingly, as those  
24 terms are defined in 45-2-101, fails to file a return or report as required under Title 15 when due or fails to file a  
25 return or report within 60 days after receiving written notice from the department that a return or report must be  
26 filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000 15% of the tax due for each  
27 month or fraction of a month during which the person purposely or knowingly fails to file a return or report, but  
28 not to exceed 75% of the tax due as determined by the department. The department may bring an action in the  
29 name of the state to recover the penalty and any delinquent taxes.

30 (b) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return

1 or report as required under Title 15, chapter 30, part 33, when due or fails to file a return or report within 60 days  
2 after receiving written notice from the department that a return or report must be filed is liable for an additional  
3 penalty of \$1,000. The department may bring an action in the name of the state to recover the penalty and any  
4 delinquent taxes.

5 (5) (a) A person who files a fraudulent return or report under Title 15 is liable for an additional penalty  
6 of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or  
7 report. The department may bring an action in the name of the state to recover the penalty, interest, and any  
8 delinquent taxes.

9 (b) A person who has no tax liability for the tax year and who files a fraudulent claim for a credit under  
10 Title 15 is liable for an additional penalty of 75% of the amount attributable to the fraudulent amount of the credit  
11 claimed. The department may bring an action in the name of the state to recover the penalty, interest, and amount  
12 paid.

13 (6) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty  
14 imposed, for a penalty of \$2,500. A frivolous return or report is one that is filed by a person and that omits  
15 information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based on  
16 a frivolous position, or is based on the taxpayer's action to impede collection of taxes. Frivolous positions are  
17 those identified in 26 U.S.C. 6702 as those provisions may apply to provisions of Title 15. The department may  
18 bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

19 ~~(4)(7)~~ (a) ~~Except as provided in 15-30-2604(3)(c), interest~~ Interest on taxes not paid when due must be  
20 assessed by the department. The department shall determine the interest ~~rates~~ rate established under subsection  
21 ~~(4)(a)(i)~~ (7)(a)(i) for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ (7)(a). Interest  
22 rates on taxes not paid when due for a calendar year are as follows:

23 (i) For (A) FOR INDIVIDUAL INCOME TAXES NOT PAID WHEN DUE, INCLUDING DELINQUENT TAXES AND DEFICIENCY  
24 ASSESSMENTS, THE INTEREST RATE IS EQUAL TO THE UNDERPAYMENT RATE FOR INDIVIDUAL TAXPAYERS ESTABLISHED  
25 BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY PURSUANT TO SECTION 6621 OF THE  
26 INTERNAL REVENUE CODE, 26 U.S.C. 6621, FOR THE FOURTH QUARTER OF THE PRECEDING YEAR OR 8%, WHICHEVER  
27 IS GREATER.

28 (B) BEGINNING JANUARY 1, 2018, FOR individual income taxes not paid when due, including delinquent  
29 taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers  
30 established by the secretary of the United States department of the treasury pursuant to section 6621 of the

Internal Revenue Code, 26 U.S.C. 6621, for the ~~fourth~~ third quarter of the preceding year ~~or 8%, whichever is~~  
greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and  
deficiency assessments, the interest rate is 12% a year.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date  
of the return until the tax is paid. ~~Except as provided in 15-30-2604(3)(c), interest~~ Interest accrues daily on the  
unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension  
of time for filing the return.

~~(5)(8)~~ (a) Except as provided in subsection ~~(5)(b)~~ (8)(b), this section applies to taxes, fees, remittances,  
and other assessments imposed under ~~Titles~~ Title 15, and Title 16, ~~[and the former 85-2-276]~~ and Title 53,  
chapter 19, part 3.

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,  
chapter 70.

~~(6)(9)~~ Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate  
in effect at the time the tax accrued.

~~(7)(10)~~ ~~Except as provided in 15-30-2604, penalty~~ Penalty and interest must be calculated and assessed  
commencing with the due date of the return.

~~(8)(11)~~ Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)(12)~~ Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid  
or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the  
interest rate determined in subsection ~~(4)(a)(i)~~ (7)(a)(i). ~~(Bracketed language in subsection (5)(a) terminates June~~  
~~30, 2020--sec. 18, Ch. 288, L. 2005.)"~~

**Section 3.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the  
taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,  
and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other

1 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
2 under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
4 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

5 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
6 reduction of Montana income tax liability as determined under subsection (15);

7 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
8 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

9 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

10 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
11 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

12 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
13 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
14 of the same estate or trust for the same tax period; and

15 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), ~~for tax years commencing after~~  
16 ~~December 31, 2002~~, the amount of any dividend to the extent that the dividend is not included in federal adjusted  
17 gross income.

18 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
19 include the following, which are exempt from taxation under this chapter:

20 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a  
21 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt  
22 from taxation by Montana under federal law;

23 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
24 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

25 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including  
26 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

27 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (14), the first \$3,600 of all  
28 pension and annuity income received as defined in 15-30-2101;

29 (ii) subject to subsection (14), for pension and annuity income described under subsection (2)(c)(i), as  
30 follows:

1 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
2 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
3 excess of \$30,000 as shown on the taxpayer's return;

4 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
5 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
6 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
7 as shown on their joint return;

8 (d) all Montana income tax refunds or tax refund credits;

9 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

10 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section  
11 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January  
12 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,  
13 or lodging;

14 (g) all benefits received under the workers' compensation laws;

15 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
16 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;

17 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
18 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

19 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
20 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
21 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

22 (k) principal and income in a first-time home buyer savings account established in accordance with  
23 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
24 of a single-family residence;

25 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition  
26 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal  
27 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of  
28 a designated beneficiary;

29 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
30 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

1 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
2 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
3 of the same estate or trust for the same tax period;

4 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch  
5 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction  
6 is not provided for federal income tax purposes;

7 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
8 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
9 taxpayer meet the filing requirements in 15-30-2602.

10 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
11 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

12 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

13 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in  
14 15-31-163.

15 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall  
16 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
17 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
18 is effective.

19 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
20 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
21 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and  
22 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
23 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must  
24 be made to determine the amount of income or loss of the partnership or small business corporation.

25 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
26 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
27 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
28 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
29 Montana return.

30 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section



1 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may  
2 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital  
3 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss  
4 must be split equally on each return.

5 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and  
6 who file separate Montana income tax returns are not required to recompute allowable passive losses according  
7 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal  
8 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must  
9 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

10 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a  
11 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.  
12 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is  
13 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

14 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a  
15 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate  
16 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.  
17 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted  
18 gross income.

19 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and  
20 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana  
21 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The  
22 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross  
23 income.

24 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
25 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
26 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
27 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
28 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
29 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
30 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted

1 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
2 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
3 or expected to last at least 12 months.

4 (11) (a) An individual who contributes to one or more accounts established under the Montana family  
5 education savings program or to a qualified tuition program established and maintained by another state as  
6 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted  
7 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each  
8 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses  
9 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The  
10 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account  
11 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the  
12 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect  
13 to withdrawals of contributions that reduced adjusted gross income.

14 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in  
15 15-62-208.

16 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection  
17 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

18 (i) is a health care professional licensed in Montana as provided in Title 37;

19 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
20 population in a federally designated health professional shortage area, a medically underserved area or  
21 population, or a federal nursing shortage county as determined by the secretary of health and human services  
22 or by the governor;

23 (iii) has had a student loan incurred as a result of health-related education; and

24 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
25 program described in subsection (12)(b) as an incentive to practice in Montana.

26 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or  
27 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
28 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
29 as a licensed health care professional.

30 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of

capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c).

(15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

**Section 4.** Section 15-30-2339, MCA, is amended to read:

**"15-30-2339. Residential property tax credit for elderly -- filing date.** (1) Except as provided in subsection (3), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(4) In the event that an individual who would have a claim under 15-30-2337 through 15-30-2341 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(5) The department or an individual may revise a return and make a claim under 15-30-2337 through 15-30-2341 within 5 3 years from the last day prescribed for filing a claim for relief."

**Section 5.** Section 15-30-2341, MCA, is amended to read:

**"15-30-2341. Residential property tax credit for elderly -- limitations -- denial of claim.** (1) Only one claimant per household in a claim period under the provisions of 15-30-2337 through 15-30-2341 is entitled to relief.

(2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.

(4) A person filing a false or fraudulent claim under the provisions of 15-30-2337 through 15-30-2341 must be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid, penalties, and interest may be recovered as ~~any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt must bear interest from the date of the original payment of claim until paid, at the rate of 1% per month provided in~~ 15-1-216."

**Section 6.** Section 15-30-2512, MCA, is amended to read:

**"15-30-2512. Estimated tax -- payment -- exceptions -- interest.** (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or  
(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than

1 \$500 after reductions for credits and withholding;

2 (ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12  
3 months, and if the individual was a citizen or resident of the United States throughout that tax year;

4 (iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that  
5 the department determines to constitute good cause; or

6 (iv) the individual retired in the tax year after having attained the age of 62 or if the individual became  
7 disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year  
8 following the tax year in which the individual retired or became disabled.

9 (2) Estimated taxes must be paid in four installments according to one of the following schedules:

10 (a) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on  
11 January 1, estimated tax payments are due on the following dates:

12	Installment	Date
13	First	April 15
14	Second	June 15
15	Third	September 15
16	Fourth	January 15 of the following tax year

17 (b) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on  
18 a date other than January 1, estimated tax payments are due on the following dates:

19	Installment	Date
20	First	15th day of the 4th month following the beginning of the tax year
21	Second	15th day of the 6th month following the beginning of the tax year
22	Third	15th day of the 9th month following the beginning of the tax year
23	Fourth	15th day of the month following the close of the tax year

24 (3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual  
25 payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding  
26 installment must be proportionally changed so that the balance of the required annual payment is paid in equal  
27 installments over the remaining period of time.

28 (b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent  
29 installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the  
30 taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required.

For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If Subject to subsection (5)(f), if an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due

1 date for the installment.

2 (c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment  
3 must be credited against unpaid required installments in the order in which those installments are required to be  
4 paid.

5 (d) For a married taxpayer filing separately on the same form, the interest provided for in subsection  
6 (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on  
7 the taxpayer's return.

8 (e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated  
9 taxes if:

10 (i) the taxpayer pays in full the amount computed on the return as payable; and

11 (ii) the taxpayer files a return on or before the last day of the month following the close of the tax year  
12 referred to in subsection (2)(a) or (2)(b).

13 (f) Interest on the underpayment of estimated tax may not be assessed against a taxpayer if the tax paid  
14 by the taxpayer from employer withholding and estimated tax payments satisfies the requirements of subsection  
15 (1)(a)(i) or (1)(a)(ii) and the taxpayer has paid approximately equal quarterly installments of estimated taxes.

16 (6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3%  
17 of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

18 (7) The department shall promulgate rules governing reasonable extensions of time for paying the  
19 estimated tax. An extension may not be for more than 6 months."

20  
21 **Section 7.** Section 15-30-2531, MCA, is amended to read:

22 **"15-30-2531. Credits and refunds -- period of limitations.** (1) If the department determines by  
23 examination of an employer's account, or upon claim filed by an employer, that the employer has overpaid the  
24 amount of tax, penalty, or interest, the amount of the overpayment may be refunded to the employer or applied  
25 to current or future obligations of any tax, penalty, or interest for any tax contained in this title at the discretion  
26 of the taxpayer.

27 (2) A credit or refund may be allowed only if the claim is filed or the determination is made within 5 3  
28 years of the due date prescribed for filing a report or 1 year from the date of the notification of the overpayment  
29 by the department.

30 (3) The department shall notify the employer of the overpayment and the credit or refund options

1 available to the employer. A credit must be applied to the employer account unless directed otherwise by the  
2 employer.

3 (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the claim  
4 is subject to review as provided in 15-1-211.

5 (5) Interest is:

6 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

7 (b) payable from the due date of the payment or the date overpayment was verified, whichever is later;

8 (c) not payable if the overpayment is applied to current or future obligations with the department.

9 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the employer  
10 directs the department to refund the overpayment.

11 (7) If additional information is required to verify the amount of the overpayment, the 45-day period in  
12 subsection (6) does not begin until the information is provided."

13  
14 **Section 8.** Section 15-30-2604, MCA, is amended to read:

15 **"15-30-2604. Time for filing -- extensions of time.** (1) (a) Except as provided in subsection (1)(b), a  
16 return must be made to the department on or before the 15th day of the 4th month following the close of the  
17 taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made  
18 on or before April 15 following the close of the calendar year.

19 (b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the internal  
20 revenue service and that is not observed in Montana, the return may be made on the first business day after the  
21 holiday.

22 (ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of  
23 late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic  
24 or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

25 (2) The return must set forth those facts that the department considers necessary for the proper  
26 enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making  
27 the return verifying that the statements contained in the return are true. Blank forms of return must be furnished  
28 by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation  
29 to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum  
30 tax of \$1.



(3) (a) ~~Subject to subsections (3)(b) and (3)(c), a~~ A taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) ~~Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.~~

~~———(ii) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (3)(b)(ii) due~~ must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) ~~A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.~~

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) ~~Except as provided in subsection (3)(c), the~~ The extension of time for filing a return is not an extension of time for the payment of taxes."

**Section 9.** Section 15-30-2605, MCA, is amended to read:

**"15-30-2605. Revision of return by department -- statute of limitations -- examination of records and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.

(2) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-2607 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that

1 violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed  
2 and the tax may be collected at any time after it becomes due.

3 (5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of  
4 making an estimate of taxable income of any person where information has been obtained, may also examine  
5 or cause to have examined by any agent or representative designated by it for that purpose any books, papers,  
6 or records of memoranda bearing upon the matters required to be included in the return and may require the  
7 attendance of the person rendering the return or any officer or employee of the person or the attendance of any  
8 person having knowledge in the premises and may take testimony and require proof material for its information,  
9 with power to administer oaths to the person or persons."  
10

11 **Section 10.** Section 15-30-2606, MCA, is amended to read:

12 **"15-30-2606. Tolling of statute of limitations.** The running of the statute of limitations provided for  
13 under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of  
14 federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has  
15 instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1  
16 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619, the statute of  
17 limitations does not apply until 5 3 years from the date the federal changes become final or the amended federal  
18 return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the  
19 amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations  
20 does not apply for 2 additional years from the time specified in 15-30-2605."  
21

22 **Section 11.** Section 15-30-2607, MCA, is amended to read:

23 **"15-30-2607. Application for revision -- appeal.** An application for revision may be filed with the  
24 department by a taxpayer within 5 3 years from the last day prescribed for filing the return as provided in  
25 15-30-2605(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the  
26 department has revised a return pursuant to 15-30-2605(3), the taxpayer may revise the same return until the  
27 liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the  
28 department, the taxpayer may appeal to the state tax appeal board."  
29

30 **Section 12.** Section 15-30-2609, MCA, is amended to read:

**"15-30-2609. Credits and refunds -- period of limitations.** (1) If the department discovers from the

examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-2606 and 15-30-2607, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 3 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(ii) the overpayment results from the carryback of a net operating loss; or

(iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing

1 in 15-30-2604, including any extension, interest is payable from the date the return was filed.

2 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax  
3 liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to  
4 which interest is allowable."

5  
6 **Section 13.** Section 15-30-2643, MCA, is amended to read:

7 **"15-30-2643. Time limitations for prosecution.** A prosecution for an offense under 15-30-2641 must  
8 be commenced within 5 3 years after the offense is committed."

9  
10 **Section 14.** Section 15-30-3003, MCA, is amended to read:

11 **"15-30-3003. (Temporary) Montana farm and ranch risk management account -- deposits --**  
12 **exclusion from income.** (1) An individual or a family farm corporation engaged in an eligible agricultural  
13 business may create a Montana farm and ranch risk management account, as provided in this part, to use as a  
14 risk management tool for the individual's or family farm corporation's agricultural business. The number of risk  
15 management accounts that may be created is limited to one for each individual or family farm corporation.

16 (2) Deposits to the account may be excluded from adjusted gross income as provided in 15-30-2110 in  
17 an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business  
18 included in federal adjusted gross income or \$20,000 a year. For the purposes of this section, a taxpayer is  
19 considered to have made a deposit to an account if the deposit is made:

20 (a) during the tax year; or

21 (b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.

22 (3) A deposit not distributed within 5 3 years is considered to have been distributed to the taxpayer as  
23 provided in 15-30-3005.

24 (4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which  
25 an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in  
26 the appropriate year. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

27  
28 COORDINATION SECTION. SECTION 15. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 65 AND  
29 [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 15-30-2604, THEN [SECTION 10]  
30 OF SENATE BILL NO. 65 AMENDING 15-30-2604 IS VOID.

1

2        NEW SECTION. Section 16. Effective dates. (1) Except as provided in subsection (2), [this act] is  
3 effective January 1, 2017.

4        (2) [Sections 3, 4, 7, and 9 through 14 15, AND 17] and this section are effective on passage and  
5 approval.

6

7        NEW SECTION. Section 17. Applicability. (1) Except as provided in subsection (2), [this act] applies  
8 to:

9        ~~\_\_\_\_\_ (a) penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016;~~  
10 ~~and~~

11 ~~\_\_\_\_\_ (b) interest computed under 15-1-216 assessed on income taxes owed after December 31, 2016;~~  
12 ~~regardless of the tax reporting period for which the taxes are owed.~~

13        (2) [Sections 3, 4, 7, and 9 through 14] apply retroactively, within the meaning of 1-2-109, to tax periods  
14 beginning after December 31, 2014.

15

16        NEW SECTION. SECTION 18. TERMINATION. [SECTION 15-1-216(7)(A)(I)(A)] TERMINATES DECEMBER 31,  
17 2017.

18

- END -